

Milpitas Ethics Evaluation Panel
Decision of the Ethics Evaluation Panel
Continuance of Complaint by R. Means
Heard December 9, 2004

Proceedings. On December 9, 2004 the Ethics Evaluation Panel met to continue the November 9, 2004 hearing meeting of a complaint alleging the Milpitas Code of Ethics had been violated. The panel convened for this particular hearing meeting was comprised of Ethics Evaluators Susan Branch, Barbara Conant, and Philip Boo Riley. Three individuals were named as respondents in the complaint: Ms. Debbie Giordano, Mr. Armando Gomez, and Mr. Bob Livengood. Mr. Livengood attended the first part of the hearing meeting and provided a verbal response to the complaint. Ms. Giordano was not in attendance, but provided the panel notification she was unable to attend due to a schedule conflict and added a statement regarding the complaint to her original written response read at the November 9, 2004 hearing meeting. Mr. Gomez was not in attendance, but provided the panel notification he was unable to attend due to a schedule conflict. The panel heard presentations by Mr. Livengood and Mr. Means; three statements were read into the record—a December 9, 2004 letter addressed to the panel by Mr. Emmanuele of the Milpitas Employees Coalition, a November 16, 2004 statement from MS. Lalwani, and Ms. Giordano’s statement. The panel reviewed the additional materials it had requested for the continuance: the tape of the 10/30/04 Final Word forum, the tape of the 10/6/04 City Council meeting, and the list of candidates who had signed the fair campaign practices pledge. The panel heard from five individuals during the public comment portions of the meeting. At the end of the meeting the panel reached a decision regarding the alleged violation of the Code of Ethics, and made a determination about an additional violation of the Code raised at the meeting by one of the panelists.

Summary of the Alleged Violation. The complaint filed by Mr. Means alleged that the respondents had violated the Honesty and Respect values of the Milpitas Code of Ethics. The complainant presented as evidence political mailers, letters to the editor, and notes from two public meetings. The complaint specified that the “three respondents conspired with the Milpitas Police and Firefighters Coalition to defame the good name and reputation of Deepka Lalwani...” through the mailers, and that one of the mailers “distorts” what the *San Jose Mercury News* had stated.

Findings of Fact: The panel determined that the evidence presented regarding the Honesty and Respect values—along with the additional materials requested by the panel—supported a portion of the complainant’s allegation. The panel found no evidence of conspiracy and focused its deliberations on portions of the Milpitas Code of Ethics--the Honesty and Respect values cited in the complaint, and in particular the Honesty Basic Role Model Behaviors B (“I keep my word and lead by example.”) and C (“I base my actions on behalf of the City on the best available information.”), Respect Basic Role Model Behavior B (“I practice patience, courtesy, and civility even when we disagree.”) and the associated illustrative behaviors--in considering whether the leadership and role model aspects of these values mean it is a responsibility of candidates and council members to repudiate a third party mailer that contain inaccurate, misleading, or inflammatory language. The panel also took into consideration the attention given to 3rd party mailers in the training workshops in which all candidates and council members participated prior to the election as part of the implementation of the City’s new Ethics Code. The panel determined the response by Mr. Livengood made constructive suggestions regarding ways to help candidates deal with 3rd party materials. The panel further determined that Mr. Livengood and Ms. Giordano were valid in stating that the item on which the mailer cited in the complaint focused--the money Ms. Lalwani was charged for the rental of office space for her campaign--was a relevant issue in a campaign, as was their statement that a request for a ruling on the matter had been made to the FPPC. The panel determined, however, that the PAC’s representation of that issue made the piece the type of 3rd party mailer that warrants repudiation by candidates and council members who act as role models in pursuing the Code’s primary objective “...to foster public trust and public confidence by promoting and maintaining the highest standards of conduct.” The

specifics in the PAC mailer's representation of Lalwani office space issue considered by the panel were the way it used inflammatory statements like "back room deals" that can not be verified, the way it presented as "fact" what were only charges that were in dispute, and the way it cited the *San Jose Mercury News* as a source in a misleading way. That they failed to criticize the mailer for these representations—for example, when the opportunity presented itself to the candidates for office at the Final Word forum—was decisive in the panel's discussions.

In the course of the deliberations the panel commented on the importance of Mr. Livengood's participation in the hearing meeting by appearing in person, and Ms. Girodano's participation by submitting written statement. The panel noted, however, that although Mr. Gomez notified the panel why he was unable to attend both meetings on this complaint, that he did not submit a statement regarding the substance of the complaint. Acknowledging the difficulties imposed on respondents of working with the Ordinance's stipulations about the timing of hearings, the panel discussed role model behavior B ("I am accountable to the public and willing to explain my actions.) of the Accountability value, considered the importance of role model and leadership in the implementation of the new Code, and determined that Mr. Gomez's failure to participate by attendance or written comment was a violation of that value.

Decision of the Panel. The panel decided—by a vote of 3 to 0—to find Ms. Debbie Giordano, Mr. Armando Gomez, and Mr. Bob Livengood in violation of the Honesty and Respect values of the Milpitas Ethics Code, and decided—by a vote of 3 to 0—that the severity of the violation warranted a criticism. The panel decided—by a vote of 3 to 0—to find Mr. Armando Gomez in violation of the Accountability value, and decided—by a vote of 3 to 0—that the severity of the violation warranted a criticism.

Items Warranting Further Discussion. The panel determined that during the course of this hearing the following items warranting further discussion by the panel or another body arose:

1. The suggestion by Mr. Livengood--that a mechanism be devised and added somewhere in the Ethics materials that would help candidates exercise due diligence regarding 3rd party mailers by requiring candidates who feel they are unfairly attacked in hit pieces to notify other candidates and provide them with a copy of the piece--has merit and should be pursued.
2. The determination that the rights and responsibilities of complainants regarding the role of witnesses in their complaints (specifically, that it is their responsibility to invite them to hearing meetings and that the statements about what the witnesses could provide should be based on their interaction with the individual) requires more attention, perhaps by review of the materials for filing a complaint (e.g. the complaint form, or "Twenty Questions") to make them clearer.
3. In light of the provision in Ordinance 265 to redact a complaint form "to prevent the names of City employees from being disclosed without their consent." (I-40-14), the Panel and City Clerk's Office should re-consider the practice of publishing materials for hearing meetings that include the names of citizens who are not respondents, complainants or witnesses contacted by the complainant.
4. The panel should consider ways to make it clearer that the scope of the panel's responsibilities does not include investigations, that the decision rendered by the lead ethics evaluator pertains only to the criteria for the acceptance of a complaint for hearing as outlined in the Ordinance (I-40-16), and that only the panel in its public hearing meetings can make determinations as to whether the evidence supports a violation of the case. When this item is taken up, the City Attorney should be consulted for assistance and advice.
5. Further education of citizens regarding the completion of the Ethics Complaint form (e.g. how to provide information helpful to the panel, the role of witnesses) should be pursued, perhaps by the Citizen's Advisory Commission or other body involved in the implementation of the Ethics Code.